



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1600 OF 2024

Varsha Sachin Patil
Age: 38 years, Occu. Parlour,
R/o. C/o. Bhausahab Suryawanshi
Kauthale, Dhule

... PETITIONER

VERSUS

1. Sachin Shashikant Patil
Age: 40 Yrs, Occu. Share Trading
2. Shashikant Madhavrao Patil
Age. 66 Yrs, Occu. Retired & Business
3. Sow. Ratnamala Shashikant Patil
Age: 52 Years, Occu. Household
4. Rahul Shashikant Patil
Age: 43 Yrs, Occu. Service,
All R/o. Ratnawali, Banglow no.13,
S. No.258, Balaji Park, Aundh Pune
5. Superintendent of Police
Dhule, Tq. & Dist. Dhule

6. The State of Maharashtra

... RESPONDENTS

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Mr. Niraj Chudiwal, Advocate h/f Mr. Satej S. Jadhav, Advocate for
the Petitioner

Mr. V. M. Jaware, APP for Respondent Nos. 5 and 6

Mr. Aditya V. Waghmare, Advocate h/f Mr. M. K. Bhosale, Advocate
for Respondent No.2

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CORAM : Y. G. KHOBRADE, J.

DATE : 12.12.2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the sides, heard finally at the stage of admission.

2. By the present Petition under Section 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the present Petitioner / complainant prays to quash and set aside the judgment and order dated 28.05.2024 passed by the learned Additional Sessions Judge, Dhule in Criminal Revision Application No. 08 of 2024, arising out of the judgment and order dated 03.02.2023 passed by the learned J.M.F.C. Court No. 3, Dhule in R.C.C. No. 213 of 2016.

3. In nutshell, the facts which give rise to the present Petition are that, the present Petitioner / complainant filed a criminal complaint bearing R.C.C. No. 213 of 2016 praying for an investigation under Section 156(3) of Cr.P.C., alleging that on 03.06.2013, her marriage solemnized with the present Respondent No. 1 as per the Hindu customs and rites at village Kauthal, Taluka and District Dhule.

After marriage, she cohabited with her husband / Respondent No. 1 and lived with Respondent Nos. 2 to 4. The Petitioner / complainant alleged that, prior to fixation of her marriage with Respondent No. 1, the relatives of Respondent No. 1 had disclosed that Respondent No.1 have done B.E. Mechanical and he is running the business of share trading at Aundh, Pune and drawing the income to the tune of Rs. 2,50,000/- per month. The Petitioner wife further alleged about raising cruelty at the hands of Respondent Nos. 1 to 4 for non fulfillment of demand of dowry, though sufficient dowry has been provided at the time of solemnization of the marriage. After marriage she was subjected cruelty on trifle ground, so also, she was abused in filthy language when she asked the accused No. 3 as to why she is providing powder or tablet either in tea or chapati. Since her husband /accused No. 1 consumes tablet (medicines), he was addicted to the said medicines and was speaking loudly. The Petitioner / wife further alleged that her husband accused No. 1 was suffering from mental disorder and he was under the treatment from the psychiatrist. She further alleged that, lastly on 03.05.2014, all the accused persons quarreled with her without any reason and drown her out of her matrimonial house. When her father talked with the

accused persons as to why they are troubling her daughter, at that time, the accused persons again raised demand of Rs. 10,00,000/- (Rupees Ten Lakh). Thereafter, on 26.08.2014, her husband / accused No.1 issued false notice, which she replied. On 08.03.2015, all the accused persons visited at her parental house and quarreled with her and her parents, so also, the accused persons abused her parents and removed all the ornaments and left her parental house. Therefore, she prayed for an investigation under Section 156(3) of Cr.P.C.

4. On 22.05.2015, the learned J.M.F.C. passed an order and directed an inquiry under Section 156(3) of Cr.P.C. On the basis of said order Crime No. 66 of 2015 was registered against the present Respondent Nos. 1 to 4 / accused persons for the offences punishable under Sections 498-A, 420, 406, 323, 504, 504, 506 read with Section 120B of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. After due investigation, the Investigating Officer has filed a charge-sheet against the accused persons.

5. On 11.07.2022, the Special APP appointed by the State Government, filed an Application under Section 156(3) read with Section 173(8) of Cr.P.C. thereby praying for further investigation

through the Superintendent of Police, Dhule. The prayers made in the said application are as under:-

- “(b1) to record the additional statement of First Informant, her father, mother, brother regarding the description of ornaments which snatched by the Accused person from the First Informant on 08.03.2015.*
- (b2) to obtain the gold audit of the Nashikkar jewelers who sold the ornaments to the brother of First Informant viz. Nilesh Patil on concerned date prior to marriage.*
- (b3) To obtain the record of loan amount taken by the brother of First Informant viz. Nilesh Bhausahab Patil from HDFC Bank and one another bank.*
- (b4) The treatment papers, medical investigation report, and medical history may be directed to collect from the concerned doctor and civil hospital, Pune and to record the statement of the doctor who treated the Accused No.1 prior to marriage.*
- (b5) To search the home and lockers of Accused No.2, 3 & 4, to search the gold ornaments mentioned in the additional statements of the First Informant and witnesses.*
- (c) The search warrant may kindly be issued to the investigation officer U/s 93 (1) (c) of CrPC on application made by him at concerned time at proper juncture.”*

6. On 03.02.2023, the learned J.M.F.C., passed the order holding that in private complaint, further investigation has been

directed through the Police Station under Section 156(3) of Cr.P.C. Accordingly, Crime No. 66 of 2015 was registered with Songir Police Station for the offence punishable under Sections 498-A, 420, 406, 323, 504, 504, 506 read with Section 120B of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. The charge-sheet was filed against the accused. Therefore, the question of drawing the panchanama under Section 27, does not arise. Further, as per the provisions of Section 93 of Cr.P.C., the Court can issue search warrant, if a person did not produce documents or things required by such summons or requisition. Therefore, it is further observed and held that after charge-sheet is filed on 08.02.2018, the charges against the Respondents / accused, already framed, therefore, considering the ratio laid down by the Hon'ble Apex Court in case of ***Vinubhai Haribhai Malaviya Vs. The State of Gujarat, 2019 SCC OnLine 1346***, the Magistrate can exercise the power under Section 156(3) and Section 173(8) of Cr.P.C. Even at the post cognizance stage, until trial commences i.e. charges are framed. Since the charges against the present Respondents / accused are already framed, therefore, he declined the prayer for further investigation as prayed by the Petitioner / complainant.

7. Being aggrieved by the said judgment and order, the Petitioner questioned the legality and validity of the said order under Section 397 of Cr.P.C. in Criminal Revision Application No. 08 of 2024 before the learned Sessions Court, Dhule. On 28.05.2024, the learned Additional Sessions Judge, Dhule, passed the impugned order and affirmed the order dated 03.02.2023 passed by the learned J.M.F.C. below Exh.71 in R.C.C. No.213 of 2016.

8. The learned Counsel for the Petitioner canvassed in vehemence that during investigation, the Investigating Officer has recorded the statements of the witnesses, but filed the charge-sheet without collecting the ornaments which were snatched by the Respondents / accused on 08.03.2015 though, the Petitioner / complainant made specific allegation regarding the same in paragraph No. 13 of Criminal Misc. Application No. 302 of 2015. So also, the Investigating Officer failed to take search of the house of Respondents / accused persons as well as the lockers availed by the Respondents. Therefore, it is necessary to further investigation to collect the information in respect of the prayer clause (b1) to (b5), so also, it is necessary to issue search warrant under Section 93(1)(c) of Cr.P.C.

9. To buttress these submissions, the learned Counsel relied on the case of ***Sakiri Vasu Vs. State of U.P. and Others, 2008 AIR (SC) 907***, wherein, it is held that Section 156(3) of Cr.P.C. provides for a check by the Magistrate on the police performing its duties under Chapter XII of Cr.P.C. and it is enough to include all such incidental powers with the Magistrate which are necessary for ensuring proper investigation.

10. The learned Counsel for the Petitioner further relied on the case of ***M. Subramaniam Vs. S. Janaki, (SC) Cri. Appeal No.102/2011 dated 20/03/2020*** wherein Hon'ble Supreme Court has held that, it is not possible to accept the contention of appellants on question of locus standi, however, High Court could not have directed registration of an F.I.R. with direction to the police to investigate & file the final report, in view of judgment of the Supreme Court in ***Sakiri Vasu*** (supra).

11. Per contra, Mr. Mukundrao Fakira Kuwar, the retired Head Constable / Investigating Officer, filed an affidavit-in-reply and countered the allegations made by the present Petitioner / original

complainant. According to the Investigating Officer, after the order passed by the learned Magistrate under Section 156(3) of Cr.P.C., he recorded the statements of all the witnesses and after investigation is over, he filed the charge-sheet against the respondents / accused persons. On 27.05.2015, the Petitioner / informant was served with the notice to furnish details of gold ornaments which was allegedly snatched by the Respondents. However, the Petitioner / informant produced the unsigned receipt dated 15.05.2013, wherein the details of gold ornaments and its price was quoted, but it was just quotation and not the purchase receipt of the gold ornaments. Therefore, in order to ascertain the fact, he has visited the shop of goldsmith named in the receipt Shri Ajay Ramkrishna Nashikkar, but the said goldsmith refused to provide any information about purchase of gold ornaments by the family members of the Petitioner / informant. Accordingly, he recorded statement of Shri Ajay Ramkrishna Nashikkar on 05.06.2015. Since no detail information about the ornaments were received, there is no seizure panchanama of gold ornaments as alleged by the Petitioner. Therefore, there is no necessity for further investigation under Section 156(3) and 173(8) of Cr.P.C.

12. To buttress these submissions, the learned APP placed reliance on the case of ***Melatharu Mining Company Vs. State of Maharashtra, All M.R. (Cri.) 3738***, wherein the co ordinate Bench of this Court has held that the Magistrate cannot *suo-motu* or on application of de facto complainant, in contradiction to the investigating officer, order further investigation by resorting to the provisions contained in Section 178(3) of the Code of Criminal Procedure, 1973 after the trial has commenced. The trial, in turn, commences upon the framing of the charge.

13. Reverting back to the present case, it *prima-facie* appears that the present Petitioner is a de facto complainant in R.C.C. No.213 of 2016, arising out of the Crime No.66 of 2015 registered with Songir Police Station for the offences punishable under Sections 498A, 420, 406, 323, 504, 504, 506 read with Section 120B of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, as per the order dated 22.05.2015 passed by the learned J.M.F.C. in private criminal complaint i.e. Criminal Application No.302 of 2015.

14. It is a matter of record that the Investigating Officer conducted investigation and recorded statement of all the witnesses.

Since the accused / Respondent Nos. 2 to 4 were enlarged on anticipatory bail, therefore, there is no panchanama under Section 27 of the Evidence Act.

15. No doubt, on 11.07.2022, the present Petitioner / informant filed Exh.71 and application under Section 156(3) read with Section 173(8) of Cr.P.C. and prayed for further investigation on the various grounds i.e. (i) Police did not investigated the crime, properly. (ii) The Investigating Officer has not seized gold ornaments and not prepared panchanama under Section 27 of the Evidence Act. (iii) The Police has not searched the house of the accused under Section 93 of Cr.P.C., and (iv) the Investigating Officer has not investigated about psychiatrist disorder treatment of Respondent No.1 / accused No.1.

16. The Petitioner / informant has not denied that on 08.02.2018, the learned J.M.F.C. framed the charges against Respondent Nos. 1 to 4 / accused persons. The Special APP appointed, then after lapse of more than four years, the informant / Petitioner has filed application Exh.71 and prayed for further investigation without furnishing the details of the ornaments which

have been allegedly snatched by the Respondent Nos. 1 to 4 / accused persons.

17. I have gone through the impugned judgment and order dated 28.05.2024 passed by the Revisional Court in Criminal Revision Application No. 08 of 2024, as well as the order dated 03.02.2023 passed by the learned J.M.F.C. Court No.3, Dhule below Exh.71. Both the Courts concurrently held that after the charges are framed against the Respondents / accused persons, further investigation cannot be directed under Section 156(3) and under Section 173(8) of Cr.P.C., on an application of de facto complainant / Petitioner.

18. In the case of ***Melatharu Mining Company*** cited (supra), this Court considered various case laws of the Supreme Court and held that the Magistrate cannot *suo-motu* or on application of de facto complainant, in contradistinction to the Investigation Officer, order further investigation by researching the provisions under Section 173(8) Cr.P.C., after the trial has commenced i.e. in turn of framing of the charges.

19. In the case in hand, as discussed above, the Petitioner / informant filed Exh.71 after framing of charge i.e. after delayed of

four years. The trial commences upon framing of charge. Therefore, both the Courts rightly declined to entertain the prayer of the Petitioner. Therefore, the findings recorded by both the Courts below does not appeal illegal, perverse, bad in law and no interference is called at the hands of this Court. Therefore, I do not find any substantial ground to interfere with the findings recorded by both the Courts below. Therefore, the Writ Petition is dismissed. Rule is discharged.

[Y. G. KHOBRADE, J.]

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